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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,554	11/25/2003	Russell J. Kempf	420.020	5841
7590	01/06/2005		EXAMINER	
Andrew S. McConnell Boyle, Fredrickson, Newholm, Stein & Gratz, S.C. Suite 1030 250 E. Wisconsin Avenue Milwaukee, WI 53202			KOVACS, ARPAD F	
			ART UNIT	PAPER NUMBER
			3671	
DATE MAILED: 01/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/721,554	KEMPF ET AL
	Examiner	Art Unit
	Árpád Fábián Kovács	3671

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 November 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-15, 17-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Lesher et al (5203154).

Lesher discloses:

In re claim 1, 10-14:

A windrow merger, a frame, a wheel assembly (fig 1),

A plurality of functional assemblies (lifting, pivoting hitch, belt drive, picking up assemblies) (fig 5);

A control arrangement with inputs controlling single one of the functional assemblies (either: ref 64a lift which is raise/lower the merger, 62a pickup the speed of the merger pickup, 66a hitch pivot which moves the merger inwardly/outwardly, 60a belt drive for belt ref 37, col. 3, ln 25 for adjusting speed and/or direction, i.e. reversible col. 3, ln 29)

In re claim 7:

The controller, housing, main switch (power on/off of the control arrangement and/or the vehicle which also cuts off power to the control arrangement) on the tow vehicle (col. 4, ln 22-23);

In re claim 1-4, 15, 17-18:

A harness arrangement through which the controller is interconnected with the each of the functional assemblies (col. 2, ln 52-53);

Electrically connected (via multiple connectors) the controller to the functional assemblies & power supply (col. 4, ln 19-21; see fig 5);

In re claim 15:

The bed shift for changing the lateral position of the conveyor belt relative to the merger (can be accomplished with the lift assembly);

In re claim 19-20, 5-6:

Solenoid valves, manifold (col. 4, ln 13-14);

In re new claim 24, newly amended claim 9:

Visual display (in the cab, col. 4, ln 22-23).

As applied to claim(s) 21-23, new claim 25, in view of the structure disclosed/taught by Lesher, the method of operating/using the device is inherent since it is the normal and logical manner in which the device is used.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Lesher et al (5203154), in view of Peeters et al (6212865).

Lesher discloses the claimed device except for an extension & lift assembly. It is noted that the claim does not set forth a conveyor belt for the extension.

Peeters discloses that it is known in the art to provide an extension (ref 40) which is adjustable to affect the discharge of product to be merged, since it is desired to control the distance from the merger that the product material is deposited after discharge (see col. 3, ln 38-49).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Lesher with the teachings of Peeters, in order to control the distance from the merger the product is deposited, as taught by Peeters that it is desireable to do so.

Response to Arguments

5. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3671

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács
Primary Examiner
Art Unit 3671

ÁFK